

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #97-08**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Sales and use taxability of orthodontic appliances and devices.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and

(E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

### **FACTS**

[THE TAXPAYER] operates an orthodontic practice located in [CITY], Tennessee. The taxpayer purchases corrective orthodontic appliances and devices (hereinafter "appliances") which he attaches to the teeth of his patients.

### **ISSUE**

Is the taxpayer required to pay sales or use tax on his purchases of orthodontic appliances or devices which are to be attached to the teeth of the taxpayer's patient?

### **RULINGS**

No.

### **ANALYSIS**

T.C.A. § 67-6-335 states:

A dentist shall be considered the user and consumer of the tangible personal property used in the practice of the dentist's profession, and the tax imposed by this chapter shall not be applicable to all or any part of the charges made by a dentist to the dentist's patients in connection with the sale or transfer of such tangible personal property.

While under this provision the taxpayer is not liable to collect the sales tax on the transfer of tangible personal property to his patient, as the user and consumer, he is liable for payment of sales or use tax on the purchase of tangible personal property used in his practice. See T.C.A. § 67-6-203. However, the provisions of T.C.A. § 67-6-335 must be considered together with any other exemption which would exempt the tangible personal property being consumed.

T.C.A. § 67-6-314 states, in pertinent part:

There is exempt from the sales tax imposed by this chapter:  
... (5) The sale or repair of prosthetics, *orthotics*, special molded orthopedic shoes, walkers, crutches, surgical supports of all kinds, and *other similarly medical corrective or support appliances and devices*. (Emphasis supplied.)

As explained in the following, the appliances which are the subject of this ruling are covered by this exemption. "Orthodontia" is defined as "the dental specialty and practice of correcting abnormally aligned or positioned teeth." AMERICAN HERITAGE DICTIONARY (2d College Ed. 1985). The purpose of the appliances is obviously to align or reposition the patient's teeth. The Department has applied the exemption for orthotics<sup>1</sup> to devices used to brace, support, or align the skeletal or muscular system. The teeth are a part of the skeletal system<sup>2</sup> and an appliance used to align or reposition the teeth is exempt as an orthotic. Even if it were argued that such appliances are not orthotics, their function is so close to the other items of property specifically listed in the statute so as to constitute "similarly medical corrective or support appliances and devices."

Under the preceding analysis, sale or use tax is not due on the taxpayer's purchases of the appliances in question.

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APPROVED: Ruth E. Johnson

DATE: 4/21/97

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<sup>1</sup> "Orthotics" is defined as "a branch of medicine that deals with the use of specialized mechanical devices to support or supplement weakened joints or limbs." AMERICAN HERITAGE DICTIONARY (2d College Ed. 1985). In the context of T.C.A. § 67-6-314(5), the term no doubt is intended to refer to orthotic devices.

<sup>2</sup> "Tooth" is defined as "...one of a set of hard, bonelike structures rooted in sockets in the jaws..." AMERICAN HERITAGE DICTIONARY (2d College Ed. 1985). Since teeth are bonelike and rooted in the jaws, it is logical, for the purpose of the sales tax exemption, to consider them a part of the skeletal system.